

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

In re the Chapter 11 of)
M. D. Miller Trucking & Topsoil, Inc.) No. 18-30959
Debtor(s).)

ORDER CONFIRMING PLAN AND APPROVING THE DISCLOSURE STATEMENT

The Modified Chapter 11 Plan of Reorganization filed by M. D. Miller Trucking & Topsoil, Inc. on September 27, 2019, having been transmitted to creditors; and

The Court having determined that the Amended Disclosure Statement filed on September 27, 2019, contains adequate information; and

It having been determined after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(a) and § 1129(b) have been satisfied;

IT IS ORDERED that:

1. The Modified Plan filed by M. D. Miller Trucking & Topsoil, Inc., on September 27, 2019 is confirmed. *(Ex A to this order)*
2. A Post-confirmation status is set for Feb 11 2020 at 11:00 in room 682 of the Dirksen Federal Building.

A copy of the confirmed plan is attached. *Ex A to this order*

Dated: Dec 12, 2019

BY THE COURT

[Signature]
United States Bankruptcy Judge Schneider & Stone

Ben Schneider
8424 Skokie Blvd.
Suite 200
Skokie, IL 60077

Fill in this information to identify the case:

Debtor name M. D. Miller Trucking & Topsoil, Inc.United States Bankruptcy Court for the: NORTHERN DISTRICT OF ILLINOISCase number (if known) 18-30959☐ Check if this is an amended filing

Official Form 425A

Modified Plan of Reorganization for Small Business Under Chapter 11

12/17

M. D. Miller Trucking & Topsoil, Inc. 's Modified Plan of Reorganization, Dated September 27, 2019

Article 1: Summary

This Plan of Reorganization (the *Plan*) under chapter 11 of the Bankruptcy Code (the *Code*) proposes to pay creditors of **M. D. Miller Trucking & Topsoil, Inc.** (the *Debtor*) from (Specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income).

This Plan provides for:

- 1 classes of priority claims;
- 3 classes of secured claims;
- 1 classes of non-priority unsecured claims; and
- 1 classes of equity security holders.

Non-priority unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately 5 cents on the dollar. This Plan also provides for the payment of administrative and priority claims.

All creditors and equity security holders should refer to Articles 3 through 6 of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan.

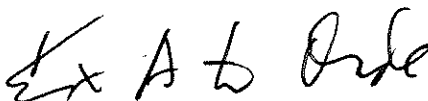
Your rights may be affected. you should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

Article 2: Classification of Claims and Interests

- | | | |
|------|---------|---|
| 2.01 | Class 1 | All allowed claims entitled to priority under § 507(a) of the Code (except administrative expense claims under § 507(a)(2), and priority tax claims under § 507(a)(8)). |
| 2.02 | Class 2 | The claims of <u>BMO Harris Bank N.A.</u> , to the extent allowed as a secured claim under § 506 of the Code. |
| 2.03 | Class 3 | The claims of <u>TCF Equipment Finance</u> , to the extent allowed as a secured claim under § 506 of the Code. |
| 2.04 | Class 4 | The claim of <u>US Bank National Association</u> , to the extent allowed as a secured claim under § 506 of the Code. |
| 2.05 | Class 5 | All non-priority unsecured claims allowed under § 502 of the Code. |
| 2.06 | Class 6 | Equity interests of the Debtor. |

Article 3: Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees

- | | | |
|------|---------------------|--|
| 3.01 | Unclassified claims | Under section § 1123(a)(1), administrative expense claims, and priority tax claims are not in classes. |
|------|---------------------|--|



Debtor **M. D. Miller Trucking & Topsoil, Inc.**
NameCase number (if known) **18-30959**

- 3.02 **Administrative expense claims** Each holder of an administrative expense claim allowed under § 503 of the Code, will be paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor; the Debtor has two such claims:
1. Suburban Teamsters of Northern Illinois Welfare and Pension Funds. This debt was incurred in the amount of \$259,702.16 pursuant to a bankruptcy court order on March 21, 2019. This debt will not be paid as a lump sum, rather, the terms of the March 21st order detail how this administrative claim will be paid back to the Creditor. The Debtor paid \$47,941.15 to the Creditor in April, 2019 and will pay \$8,405.69 per month until April 1, 2021.
 2. Marlene D. Miller. This administrative claim was incurred by the Debtor in order to make the payment of \$47,941.15 to the Suburban Teamsters of Northern Illinois Welfare and Pension Funds as described above. The money was lent by the principal and owner of all of the shares of the Debtor pursuant to a bankruptcy court order entered on April 9, 2019. The Debtor shall have the right to repay this debt as administrative on the effective date of the Plan.
 3. The Law Offices of Schneider & Stone was approved as counsel for the Debtor in possession on December 4, 2018 and will have a final invoice for the Debtor for work done since the order for relief. An estimate for this invoice is \$10,000.
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- 3.03 **Priority tax claims** Each holder of a priority tax claim will be paid pursuant to the requirements of 11 U.S.C. 1129(a)(9)(C).
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- 3.04 **Statutory fees** All fees required to be paid under 28 U.S.C. § 1930 that are owed on or before the effective date of this Plan have been paid or will be paid on the effective date.
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- 3.05 **Prospective quarterly fees** All quarterly fees required to be paid under 28 U.S.C. § 1930(a)(6) or (a)(7) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code
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Article 4: Treatment of Claims and Interests Under the Plan4.01 **Claims and interests shall be treated as follows under this Plan:**

| Class | Impairment | Treatment |
|--|---|---|
| Class 1 - Priority claims (excluding those in Article 3) | <input checked="" type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired | All claims in this Class are paid in full for the amounts claimed as priority pursuant to 11 U.S.C. 507(a). These claims are impaired as the Plan alters the legal, equitable, and contractual rights to which they are entitled to under non-bankruptcy law. |
| Department of the Treasury - \$15,674.92 Illinois Department of Revenue \$75.99 Illinois Department of Emp. Sec. - \$14,950.81 Illinois Department of Emp. Sec. - \$29.53 National Labor Relations Board - \$0 | | The Department of the Treasury and the National Labor Relations Board had claims that were bifurcated into Priority and General Unsecured parts. The Priority portion of these claims is paid as a Class 1 Creditor, the General Unsecured Portion is paid as a Class 5 Creditor. As of September 25, 2019, the NLRB has withdrawn the priority portion of its Claim. |
| Total amount owed to Class 1 - \$30,731.25 Interest rate - 0% | | The amount due to the Illinois Department of Revenue and the second amount due to the Illinois Department of Employment Security are too small to warrant monthly payments and will be paid in full on the effective date of the Plan. |
| Total amount paid to Class 1 - \$30,731.25 | | The periodic monthly Priority Class 1 payments begin on the 1st of the month in the month after the effective date of the Plan and will be paid monthly for 60 months in the following amounts: |
| | | Department of the Treasury - \$261.25 Illinois Department of Emp. Sec. - \$249.18 National Labor Relations Board - \$0 |
| Class 2 - Secured claims of BMO Harris Bank N.A. | <input checked="" type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired | These claims are impaired as the Plan alters the legal, equitable, and contractual rights to which they are entitled to under non-bankruptcy law. |
| Total amount owed to Class 2 - \$581,220.24 Interest rate 6% | | The periodic monthly Secured Class 2 payments begin on the 1st of the month in the month after the effective date of the Plan and will be paid \$11,236.64 monthly for 60 months in the following amounts. At the request of the Class 2 Creditor, the monthly payment shall be applied to all of the Secured Claims of BMO Harris in the following manner: |
| Total amount paid to Class 2 - \$674,197.00 | | Claims 4 - 10: \$11,236.62 |

Debtor **M. D. Miller Trucking & Topsoil, Inc.**
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If the Debtor is in default of its obligation to this creditor under the Plan and that default continues for five business days, the Debtor consents to the immediate recovery of the collateral and the Debtor will cooperate with the creditor's efforts to recover the same. The Debtor will execute a stipulated Writ of Replevin, to be held in escrow by the creditor pending default under the Plan. The stipulated Writ will contain language that states that the creditor is not required to post a bond.

Class 3 – Secured claims of TCF Equipment
☐ Impaired
☒ Unimpaired

This creditor obtained relief from the automatic stay and will repossess the collateral which should fully satisfy the debt owed to the Secured Creditor. If any balance remains it will be treated as a Class 5 general unsecured claim.

Total amount owed to Class 3 - \$0

Interest rate N/A

Total amount paid to Class 3 - \$0

The Debtor shall receive a discharge from this Class upon confirmation of the Plan.

Class 4 – Secured claim of US Bank
☒ Impaired
☐ Unimpaired

This claim is impaired as the Plan alters the legal, equitable, and contractual rights to which it is entitled to under non-bankruptcy law.

Total amount owed to Class 4 - \$6,737.29

Interest rate 6%

Total amount paid to Class 4 - \$7,815.00

The periodic monthly Secured Class 4 payment begins on the 1st of the month in the month after the effective date of the Plan and will be paid \$130.25 monthly for 60 months.

Class 5 – Non-priority unsecured creditors
☒ Impaired
☐ Unimpaired

These claims are impaired as the Plan alters the legal, equitable, and contractual rights to which they are entitled to under non-bankruptcy law.

Total amount owed to Class 5 - \$242,597.10

Interest rate - 0%

Total amount paid to Class 5 - \$12,129.86

The amount due to the Internal Revenue Service, Wentworth Tire, Capital One, and Pomp's Tire Service are too small to warrant monthly payments and will be paid in full on the effective date of the Plan.

The periodic monthly Class 5 payments begin on the 1st of the month in the month after the effective date of the Plan and will be paid \$183.33 monthly for 60 months.

After the Debtor has made the 60th payment under the Plan it shall receive a discharge from all Class 5 claims.

Class 6 - Equity security holders of the Debtor
☐ Impaired
☒ Unimpaired

The equity in the Debtor is currently held exclusively by Marlene D. Miller. Since the Plan does not propose to pay all claims in full, either the equity holder cannot hold retain the equity in the Reorganized Debtor or new value must be contributed to the estate. The Debtor is choosing to add new value to the estate. To do so, the Debtor will publish a notice in the Chicago Daily Law Bulletin announcing an auction of the equity in the Reorganized Debtor where Marlene D. Miller, creditors, and third parties may bid on the equity in the Reorganized Debtor. This notice will be published no less than thirty (30) days prior to confirmation and require written bids no less than three days prior to confirmation whereby the equity in the Reorganized Debtor will be sold to the highest bidder; the proceeds are property of the estate. Marlene D. Miller has placed the first bid at \$5,000.

Article 5: Allowance and Disallowance of Claims

- 5.01 **Disputed Claim:** A disputed claim is a claim that has not been allowed or disallowed, and as to which either:
- (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or
 - (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

- 5.02 **Delay of distribution on a disputed claim:** No distribution will be made on account of a disputed claim unless such claim is allowed.

- 5.03 **Settlement of disputed claims:** The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Article 6: Provisions for Executory Contracts and Unexpired Leases

Debtor **M. D. Miller Trucking & Topsoil, Inc.**
NameCase number (if known) **18-30959****6.01 Assumed executory contracts and unexpired leases**

(a) The Debtor assumes, and if applicable assigns, the following executory contracts and unexpired leases as of the effective date:

Two Sisters R.E., LLC. Commercial office space.

Teamsters Local 179. Collective bargaining agreement.

M&K National Lease. Truck leases.

CIT Truck. Truck lease.

ACAR, LTD. Truck lease.

ACAR, LTD. Truck lease.

(b) Except for executory contracts and unexpired leases that have been assumed, and if applicable assigned, before the effective date or under section 6.01(a) of this Plan, or that are the subject of a pending motion to assume, and if applicable assign, the Debtor will be conclusively deemed to have rejected all executory contracts and unexpired leases as of the effective date.

A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than 30 days after the date of the order confirming this Plan.**Article 7: Means for Implementation of the Plan**

The Debtor shall continue to be owned and operated by Marlene D. Miller. The Plan shall be funded by the monthly cash flow of the business; Marlene D. Miller will be the disbursing agent for the Debtor.

Article 8: General Provision**8.01 Definitions and rules of construction**

The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan.

8.02 Effective Date

The effective date of this Plan is the first business day following the date that is 14 days after the entry of the confirmation order. If, however, a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the date on which the stay expires or is otherwise terminated.

8.03 Severability

If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 Binding Effect:

The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 Captions

The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

8.06 Controlling Effect

Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of Illinois govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.

8.07 Corporate Governance

The Debtor shall amend its charter to provide that it is prohibited from issuing non-voting equity securities.

Article 9: Discharge**9.01 ☐ Discharge if the Debtor is an individual and § 1141(d)(3) is not applicable.**

Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

**Discharge if the Debtor is a partnership and § 1141(d)(3) is not applicable.** On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

Debtor M. D. Miller Trucking & Topsoil, Inc.
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Discharge if the Debtor is a corporation and § 1141(d)(3) is not applicable. On the effective date of this Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt:

(i) imposed by this Plan; or

(ii) to the extent provided in § 1141(d)(6).



No discharge if § 1141(d)(3) is applicable. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

Article 10: Other Provisions

[Insert other provisions, as applicable.]

Respectfully submitted,

X /s/ Marlene D. Miller

[Signature of the Plan Proponent]

Marlene D. Miller

[Printed name]

X /s/ Ben Schneider

[Signature of the Attorney for the Plan Proponent]

Ben Schneider

[Printed name]